

**UNITED STATES DISTRICT COURT, NORTHERN DISTRICT
OF ILLINOIS, EASTERN DIVISION**

MICHAEL RODGERS, MARLENE SPENCER-
RODGERS AND MARK SPENCER, by and
through Marlene Spencer-Rodgers, his
guardian Ad Litem,

Plaintiffs,

vs.

JIMINEZ ALLEN, FRANK JONES, GREGORY
MOORE, CASSIUS PATES, JACK BRIDSON,
ANTHONY GATEWOOD, TONY LUCIANO,
ZARROD BECK, KEVIN BARNETT, R. COLLINS,
C. O'NEAL, K. DAVIS, R. BLASS, T. RAJCEVICH,
FIRE CHIEF HARVEY, and THE VILLAGE OF
BELLWOOD,

Defendants.

No. 05 C 3540

Judge William J. Hibbler

**DEFENDANTS' MOTION TO DISMISS
PURSUANT TO RULE 41(b)**

NOW COME defendants, Jiminez Allen, Frank Jones, Gregory Moore, Cassius Pates, Jack Bridson, Anthony Gatewood, Tony Luciano, Zarrod Beck, Kevin Barnett, R. Collins, C. O'Neal, K. Davis, R. Blass, T. Rajcevich, Fire Chief Harvey, and the Village of Bellwood (hereinafter "Defendants"), by and through their attorneys, Ellen K. Emery and Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C., and respectfully move this Court to dismiss this case for want of prosecution pursuant to Fed. R. Civ. P. 41(b), and state as follows:

1. On July 19, 2006, this Court ordered the parties to exchange written discovery by August 31, 2006. Defendants served plaintiffs with interrogatories and requests for production of documents on August 21, 2006. Plaintiffs never served any written discovery on defendants.

2. At a status hearing on February 26, 2007, plaintiff's counsel appeared and told the Court that plaintiffs would answer written discovery within one week and serve defendants with written discovery, also within one week. This Court then ordered that written discovery would be cut off on April 13, 2007, and set the matter for further status on April 11, 2007. Plaintiffs never answered the outstanding written discovery, and never served defendants with any written discovery.

3. At the status on April 11, 2007, plaintiffs' counsel did not appear, and this Court entered an order that failure of plaintiffs to respond to outstanding discovery prior to the next court date (of May 9, 2007) or to appear might result in dismissal for want of prosecution.

4. In the interim, defendants' counsel tried to contact plaintiff's counsel by telephone, but he did not return her phone call.

5. At the status on May 9, 2007, plaintiffs' counsel again did not appear. This Court entered an order continuing the case to May 30, 2007, and ordered defendants' counsel to file the instant motion for dismissal for want of prosecution, to be noticed for May 30, 2007.

6. Because plaintiffs have failed to comply with several orders requiring them to respond to outstanding written discovery, and because plaintiffs have failed to appear in court for the last two status hearings, despite this Court's order that they do so, this case should be dismissed for want of prosecution pursuant to Fed. R. Civ. P. 41(b).

WHEREFORE, defendants, Jiminez Allen, Frank Jones, Gregory Moore, Cassius Pates, Jack Bridson, Anthony Gatewood, Tony Luciano, Zarrod Beck, Kevin Barnett, R. Collins, C. O'Neal, K. Davis, R. Blass, T. Rajceovich, Fire Chief Harvey, and the Village of Bellwood

respectfully request an order dismissing this case for want of prosecution pursuant to Fed. R. Civ.

P. 41(b).

Respectfully submitted,

Jiminez Allen, Frank Jones, Gregory Moore,
Cassius Pates, Jack Bridson, Anthony Gatewood,
Tony Luciano, Zarrod Beck, Kevin Barnett, R.
Collins, C. O'Neal, K. Davis, R. Blass, T.
Rajceovich, Fire Chief Harvey, and the Village of
Bellwood

By: /s/ Ellen K. Emery
ELLEN K. EMERY
One of the Attorneys for Defendants

Ellen K. Emery
ANCEL, GLINK, DIAMOND, BUSH, DiCiANNI & KRAFTHofer, P.C.
140 South Dearborn Street, Sixth Floor
Chicago, Illinois 60603
(312) 782-7606
(312) 782-0943 Fax

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys of record herein, hereby certifies that on May 23, 2007, the foregoing **DEFENDANTS MOTION TO DISMISS PURSUANT TO RULE 41(b)** was electronically filed with the Clerk of the U.S. District Court using the CM/ECF System, which will send notification of such filing to the following: Stephen C. Debboli at sdebboli@ssnlaw.com.

I hereby certify that I mailed a copy of the same, via U.S. First Class Mail, proper postage prepaid to:

Mr. Peter J. Hickey, III
Hickey and Nemzin
2536 South California Avenue
Chicago, Illinois 60608

/s/ Ellen K. Emery
ELLEN K. EMERY, Attorney Bar # 6183693
One of the attorneys for Defendants

ANCEL, GLINK, DIAMOND, BUSH, DICIANNI & KRAFTHOFER, P.C.
140 South Dearborn Street, Sixth Floor
Chicago, Illinois 60603
Telephone: (312) 782-7606
Facsimile: (312) 782-0943
E-Mail: emery@ancelglink.com